



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

October 2011

Volume 146

City of Bloomington Human Rights Commission Issues Hate Incidents Report

Bloomington, IN -- The City of Bloomington Human Rights Commission (BHRC), responsible for gathering data and issuing reports on local hate incidents, has released its latest report. This report includes 18 reported incidents from July 2010 through June 2011.

Barbara McKinney, director of the BHRC, emphasized that the number collected each year is reflective only of those incidents that were reported, which may not be a comprehensive count.

"The report is the best gauge of hate incidents we have, but it is never possible to determine a completely accurate number," said McKinney. "We use the report to get a general sense of what is happening in the community with respect to these types of activities."

As is always the case, the hate incidents described in this report take a variety of forms. Much of the

reported activity falls into more than one category, including verbal harassment, threats of physical harm, actual physical harm and vandalism. McKinney said that while incidents vary in degree of severity, in each case the victim was concerned enough to reach out for help.

The BHRC receives its reports from a variety of sources, including the City of Bloomington Police Department, news reports and individuals. Individuals who believe they are victims of hate incidents are urged to report the incident to the police by calling 911 or to the BHRC by calling 349-3429 or e-mailing human.rights@bloomington.in.gov. The BHRC accepts anonymous reports. A copy of the report is available upon request from the BHRC or online at www.bloomington.in.gov/bloomington-human-rights-commission.

Apartment Complexes Sued for Disability Discrimination

The U. S. Department Justice is suing the owners, developers and design professionals involved in the design and construction of nine multi-family housing complexes in Mississippi, Louisiana and Tennessee. The nine complexes include more than 2,000 apartments.

According to the lawsuit, all nine of the complexes lack accessible parking, accessible pedestrian routes leading to the apartment buildings, accessible doors and hallways and

adequate maneuvering space in kitchens and bathrooms. The DOJ said the environmental controls (such as light switches, electrical outlets and thermostats) were mounted in inaccessible locations. The leasing offices were inaccessible as well.

Federal law has long required covered multi-family housing to be accessible to people with disabilities.

BHRC Staff

Barbara E. McKinney,
Director

Barbara Toddy,
Secretary

Veronica Carsaro,
Editorial assistant

Commission Members

Dorothy Granger, Chair

*Byron Bangert, Vice
Chair*

*Prof. Carolyn Calloway-
Thomas*

Valeri Haughton

Michael Molenda

Amy Jackson

Mayor
Mark Kruzan

**Corporation
Counsel**
Margie Rice

BHRC
PO BOX 100
Bloomington IN
47402
349-3429
[human.rights@](mailto:human.rights@bloomington.in.gov)
bloomington.in.gov



ADA Mediation Works

When someone files a complaint with the Department of Justice alleging that a facility is in violation of the Americans with Disabilities Act, the DOJ often tries to mediate the dispute. With the complainant's consent, the department refers the complaint to a network of professional mediators who are familiar with ADA requirements. If the respondent agrees, the parties engage in mediation. According to the DOJ, more than 78% of all complaints that go through the mediation process have been resolved successfully.

In the July, 2011, issue of Disability Rights Online News, the DOJ highlighted the following successfully mediated complaints:

--An individual with a mobility disability who uses a scooter said he could not attend his grandson's basketball game because the gym was inaccessible. The organization agreed to install a curb cut, extend the sidewalk and post signs to the accessible entrance.

--A friend of a person who uses a wheelchair said that a public aquarium lacked sufficient accessible parking, passenger drop off areas and paths of travel. The aquarium agreed to install 18 additional accessible parking spaces, appropriate signs, passenger drop off zones and accessible paths of travel. It also updated its website to include information about its new accessible features.

--Parents of a boy who uses a wheelchair complained that a Texas fairground was inaccessible. The fairground installed accessible parking, a sidewalk from the parking lot to the entrance, a passenger drop off area, an accessible route and accessible seating in the arena. They also installed ramps, signs and grab bars in the permanent restrooms, placed accessible portable restrooms throughout the fairground, and trained staff on the ADA.

--A woman who uses a wheelchair and her husband pre-paid for a trip on a tour bus. But the company failed to provide an accessible bus, so they could not go on the trip. The company agreed to modify its policy, contracted with another company to provide accessible buses when needed, added a question about accommodations on its registration form and donated \$1,018 to a service organization.

--A person who uses a wheelchair complained that a temporary event held in the parking lot of a convention center blocked the accessible parking. The center agreed not to impede accessible parking in the future, to install a drop-off site at the main entrance, to provide training on the ADA to its staff and to give the complainant four complimentary tickets to all future events.

--A man with a mobility disability said that one elevator at a concert venue was blocked off for a private party and the other elevator was broken. The venue agreed not to block off elevators for private parties in the future, to improve its elevator repair process, to train its staff on the ADA and to give the complainant two complimentary tickets to an event of his choice.

"Price Is Right" Settles with Department of Justice

Several people with disabilities filed complaints with the U.S. Department of Justice, alleging that the game show The Price Is Right violated the Americans with Disabilities Act. They said that the wheelchair seating areas at the Bob Barker Studio were at the back of audience and that the lines of sight for the wheelchair seating were blocked by an elevated riser and by standing audience members. They also said that very few people with observable disabilities had ever been selected as contestants on the show since the ADA was enacted. The DOJ recently announced the complaint had been settled. As part of the agreement, the game show will do the following:

--make changes to its web site so that it complies with the ADA;

--conduct outreach campaigns to encourage people with disabilities to attend tapings of the show;

--remove barriers to accessibility in its facility so that people with disabilities may attend tapings and have full access to all services in the facility;

--upon request, assist people with disabilities to navigate the aisles and to get on and off the stage;

--appoint an ADA coordinator who will respond to complaints about accessibility problems;

--pay \$10,000 to each of the two complainants; and

--pay \$25,000 to the federal government as a civil penalty.



Lying About Disability May Be Grounds for Termination

John Prigge began working for Sears as a store coach in April, 2007. he had been diagnosed as having bipolar disorder in 2002, but he did not mention that when Sears hired him five years later.

In December, 2007, he got sick and missed at least two days of work. He also left work early many times. Apparently, these absences were related to his bipolar condition. But he told his supervisors that his prostate cancer had returned and that he was receiving radiation treatment.

The next month, he spent seven days in a mental health clinic because his depression was worse and he was having thoughts of suicide. When he was released, he told his supervisor that he had missed work because of his bipolar disorder and that he had been at a mental health clinic. His supervisor told him that he could not return to work until he gave Sears documentation from both the clinic and from the doctor who had treated his prostate cancer. Prigge said that he shouldn't have to provide a note from his urologist because he had

not, in fact, recently undergone prostate cancer treatment.

On February 7, 2008, Prigge gave Sears notes from both doctors. He returned to work on February 11, but was allowed to work only half of a day because his medical documentation was not complete. His supervisor told Prigge that it was imperative that he provide all of the required documentation.

On February 15, Prigge's urologist sent Sears a letter saying that Prigge did not current suffer from a "serious health condition." On February 16, Sears sent Prigge a letter telling him that he had not yet provided medical releases explaining all of his unexcused absences, including those that had occurred before and after his clinic visit. On February 21, the clinic sent Sears a letter giving the dates of Prigge's stay at the clinic. On February 26, Sears terminated Prigge for failing to provide it with medical certification explaining all of his absences.

Prigge then sued Sears, saying he had been discriminated against and

retaliated against in violation of the Americans with Disabilities Act, the Family and Medical Leave Act and the Pennsylvania Human Rights Act.

The Court held that Sears had provided a legitimate and nondiscriminatory reason for terminating Prigge, namely, that he never provided medical documentation for all of the time he had missed. Prigge admitted as much.

Sears said that it would have also terminated Prigge's employment for lying, had it known at the time that he did not suffer from prostate cancer. The Court said, "Prigge's termination for this reason would have undoubtedly been legitimate, as he admits to having misrepresented his illness."

People are often reluctant to disclose that they have a mental illness. It's important to remember that the ADA requires that employers keep medical information confidential. The case is Prigge v. Sears Holding Corporation, 2011 WL 2489937 (Third Cir. 2011).

Transgender Woman Wins Discrimination Case

According to published reports, the Illinois Human Rights Commission recently made its first award of damages in a gender identity discrimination case. The state has included gender identity in its fair employment laws since 2006.

Venessa Fitzsimmons, a transgender woman, was a cab driver for Universal Taxi Dispatch from 2004 to 2008. She said that during her employment tenure, the company owner called her a "freak," a "queer" and an

"abomination." He made her pay for her own cab repairs; other drivers did not have to pay for repairs to their cabs. And the company allegedly refused to provide her aid when her cab broke down.

On September 12, 2011, the commission ordered Universal to pay Fitzsimmons \$104,711 in damages. The articles do not say if Universal plans to appeal.

Fitzsimmons' attorney, Joanie Rae Wimmer, also a transgender woman,

said, "This award sends a message to all corporations doing business in the State of Illinois that discrimination based on gender identity will not be tolerated any longer."

(Article based on "Illinois Transgender Woman Awarded in Employment Suit," by Kate Sosin, Windy City Times, 9/13/11, and "Trans Woman Wins Discrimination Suit," by Trudy Ring, Advocate.com, 9/14/11.)



Recent ADA Settlements

The Department of Justice announced several settlements of complaints filed under the Americans with Disabilities Act:

--Wells Fargo agreed to remove barriers to accessibility in its retail stores and at automatic teller machines, to make sure its websites are accessible, to make sure its telephone services accommodate people with hearing impairments, to pay up to \$16 million to complainants, to donate \$1 million to non profit agencies that assist veterans with disabilities and to pay a \$55,000 civil penalty to the U.S. government.

--The Beginning Montessori Academy in California, a state-funded school, agreed to accept a child with autism, provide training to the child's teacher and to pay \$5,000 to the child's family.

--The Alexandria Country Day School in Louisiana agreed to admit a six-year-old child with Type I diabetes. The school had initially denied her acceptance into the school because the parents had asked the school to supervise her when she tested her blood glucose level, used her insulin pump and performed other daily diabetes care practices.

--The Beach Babies Learning Center in Connecticut agreed to overturn its decision to reject a two-year-old child's enrollment after he was diagnosed with autism. The school agreed to adopt and post nondiscriminatory policies, to modify its schedules to accommodate early intervention services for the child and to pay the family \$7,431.

--The Law School Admission Council agreed to modify its website to make it accessible to people who use screen reader technology. It also agreed to notify potential applicants who are blind that they may use an alternative process to submit applications if they can't use the electronic application process.

--Sterling, a town in Utah, agreed to furnish appropriate auxiliary aides at town council meetings to deaf members of the audience.

--Megabus agreed to make sure that all of its buses are fully accessible to people with disabilities and to modify its online reservation policy so that it will be usable to people with disabilities. It also agreed to pay \$55,000 to the federal government as a civil penalty and \$12,500 in compensatory damages to a complainant.

7-Eleven Manger Wins \$934,000

James Soliday worked for 7-Eleven for 26 years. He has 95% hearing loss and relies entirely on lip reading and visual cues when communicating with someone in person. He was able to communicate with other people in the company by using fax machines to transfer and review data and text pagers to communicate with managers, field consultants, market managers and headquarters.

When his fax machine broke, Soliday's new supervisor refused to fix it. He also eliminated text pagers for budgetary reasons. Soliday bought his own text pager, but he could not purchase the other

equipment he needed for every store he visited.

The new supervisor decided to conduct meetings by conference call but he refused to provide assistive technology. This meant Soliday could not hear what was said at the meeting, nor could he read the lips of participants. Soliday asked for accommodations but was refused.

Soliday sued and recently won a judgment of \$934,000, including \$178,000 for lost wages and benefits and \$756,000 for

emotional pain and anguish. Once the judge considers attorney fees and front-pay issues, the judgment may go much higher, up to \$1.5 million or more.

According to news reports, 7-Eleven denied that it discriminated against Soliday and plans to appeal the jury award.

If you have questions about your rights and responsibilities under fair employment laws, including the Americans with Disabilities Act, please contact the BHRC.

If you have any questions about your rights and responsibilities under fair employment laws or the ADA, please contact the BHRC.